Supreme Court, U.S.
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No. 00-714

IN THE

Supreme Court of the United States

SL SERVICE, INC. (formerly Sea-Land Service, Inc.) and CARRIERS CONTAINER COUNCIL, INC.,

Petitioners,

v.

OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, AFL-CIO; LOCAL 1351, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO and SOUTH ATLANTIC AND GULF COAST DISTRICT, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF ILA RESPONDENTS IN SUPPORT OF PETITION

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Pursuant to Supreme Court Rule 12.6, Respondents Local 1351, International Longshoremen's Association, AFL-CIO and South Atlantic and Gulf Coast District, International Longshoremen's Association, AFL-CIO ("ILA") hereby declare their support for the petition for writ of certiorari docketed in this matter on November 2, 2000.

The ILA agrees with the petitioner that a writ of certiorari should issue to review the judgment entered by the United States Court of Appeals for the Fifth Circuit; primarily for the reasons set forth in the petition, and as supplemented below.

The ILA submits that the Fifth Circuit's opinion and judgment correctly concluded that:

1. The district court did have subject matter jurisdiction over OPEIU's dispute with Sea-Land. (app. A at 7a).[1]

2. Joinder of the OPEIU under Fed. R. Civ. P. 19 was appropriate. (app. A at 7a).

3. "The district court had broad discretion to exercise jurisdiction under LMRA" (app. A at 9a).

4. Tripartite arbitration is generally favored in labor disputes of this nature. (app. A at 12a).

5. Labor arbitration is distinguishable from the arbitration of general commercial disputes (app. A at 10a).

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1. Appendix references are to the appendix to the petition for writ of certiorari

Having reached these favorable conclusions, the Fifth Circuit should have followed them to their logical conclusion and affirmed the district court's order. Instead, it erroneously relied on principles of collateral estoppel and res judicata as a basis for invalidating the district court's actions. Such result is inconsistent with national labor policy favoring the peaceful resolution of such disputes and opens the door to an abuse of the judicial process.

In support of its conclusion, the court cites its own prior decision in *Hicks v. Quaker Oats Co.*, 662 F.2d 1158, 116 (5th Cir. 1981) for the proposition that "those doctrines (res judicata and collateral estoppel) apply where the issues are identical, the issue has been previously litigated, and the determination of the issue previously was a critical and necessary part of the judgment in that earlier action" (app A at 13a-14a).

What the Fifth Circuit fails to recognize is that *none* of the criteria it listed applies to this case. The issues in the New York proceeding before Arbitrator Marx and Judge Patterson involved only the OPEIU's contract with Sea-Land. They essentially raised the question of whether Sea-Land had engaged in conduct in violation of that labor agreement. As both Judge Patterson[2] and the Second Circuit[3] subsequently pointed out, there was no consideration of the ILA's claim (or contract) in that proceeding, and no attempt to weigh the relative merits of the competing claims of the two unions. Thus, it is abundantly clear that the court erred in its application of collateral estoppel because: (a) the issues

2. App. E at 43a.

3. App. F at 62a.

in the two proceedings were not identical; (b) the issue before the Texas district court was not previously litigated in the New York proceeding; and (c) the determination of the issue was not even before the arbitrator or the court in the New York proceeding — much less a "critical" or "necessary part" of the judgment.

The Fifth Circuit's extension of principles of collateral estoppel and res judicata to the confirmation of an arbitration award in a different jurisdiction was not only erroneous but is also in conflict with the decisions of other United States Courts of Appeal. *See Consolidated Coal Co. v. UMW, Dist. 12*, 213 F.3d 404 (5th Cir. 2000); *Chiron Corp. v. Ortho Diagnostic Sys. Inc.*, 207 F.3d 1126 (9th Cir. 2000); *John Hancock Mut. Life Ins. Co. v. Olick*, 151 F.3d 132 (3d Cir. 1998); *National Union Fire Ins. Co. v. Belco Petroleum Corp.*, 88 F.3d 12 (2d Cir. 1996). This point has been briefed and argued in Petitioners' submission and need not be further argued here except to state that we agree with the Petitioners' submission on this point.

The court's faulty reasoning on the collateral estoppel issue leads, unavoidably, to a collision with the national labor policy favoring the peaceful resolution of labor disputes. The result reached by the Fifth Circuit is that a union having a contract with a large corporation can: (a) file a grievance under its contract seeking an award of work historically performed by another union at that same company; (b) obtain a favorable ruling on its grievance; (c) file a petition for enforcement of its award in a federal district court half-way across the country; (d) obtain an order enforcing its award from a United States District Court — all without any notice to the other union — and, then, present that order to the other union as a fait accompli forever precluding it from any opportunity to ever be heard on the subject.

CONCLUSION

The ILA respectfully submits that the result reached by the court of appeals is wholly inconsistent with the purpose and policies of national labor legislation. It results in gross injustice, and conflicts with other circuit court decisions as set forth in the petition. For these reasons, petitioner's petition for writ of certiorari should be granted.

Respectfully submitted,

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